

Executive Summary – Enforcement Matter – Case No. 50512

City of Pflugerville

RN101430064

Docket No. 2015-0770-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Pflugerville Water, located at the northeast corner of Pfenning Lane and Black Locust Drive, Pflugerville, Travis County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: September 18, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$5,775

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$5,775

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Executive Summary – Enforcement Matter – Case No. 50512

City of Pflugerville

RN101430064

Docket No. 2015-0770-WQ-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 31, 2015

Date(s) of NOE(s): May 1, 2015

Violation Information

The Respondent caused, suffered, allowed, or permitted the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge. Specifically, on March 31, 2015, approximately 100,000 gallons of hyperchlorinated water was drained from a 0.5 million gallon tank into a storm sewer discharging to Gilleland Creek, resulting in 1,509 dead fish [TEX. WATER CODE § 26.121(a)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures:

- a. By March 31, 2015, ceased the unauthorized discharge of hyperchlorinated water;
- b. By March 31, 2015, monitored chlorine levels in Gilleland Creek and confirmed that chlorine levels returned to normal levels;
- c. By April 1, 2015, removed and disposed of the dead fish;
- d. By April 17, 2015, conducted a visual survey of the creek to confirm the creek was able to sustain aquatic life; and
- e. By April 17, 2015, submitted a final report describing the response action to the Austin Regional Office.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 50512

City of Pflugerville

RN101430064

Docket No. 2015-0770-WQ-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Tiffany Maurer, Enforcement Division,
Enforcement Team 6, MC 128, (512) 239-2696; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Brandon Wade, City Manager, City of Pflugerville, 100 East Main Street,
Suite 300, Pflugerville, Texas 78691-0589

The Honorable Jeff Coleman, Mayor, City of Pflugerville, 100 East Main Street, Suite
300, Pflugerville, Texas 78691-0589

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	4-May-2015	Screening	11-May-2015	EPA Due	
	PCW	27-May-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Pflugerville		
Reg. Ent. Ref. No.	RN101430064		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	50512	No. of Violations	1
Docket No.	2015-0770-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Tiffany Maurer
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	2.0%	Enhancement	Subtotals 2, 3, & 7	\$150
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Notes: Enhancement for one NOV with dissimilar violations.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,875
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$7
Estimated Cost of Compliance: \$2,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,775
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$5,775
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,775
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$5,775
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Screening Date 11-May-2015
Respondent City of Pflugerville
Case ID No. 50512
Reg. Ent. Reference No. RN101430064
Media [Statute] Water Quality
Enf. Coordinator Tiffany Maurer

Docket No. 2015-0770-WQ-E

PCW

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 2%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 2%

Screening Date 11-May-2015
Respondent City of Pflugerville
Case ID No. 50512
Reg. Ent. Reference No. RN101430064
Media [Statute] Water Quality
Enf. Coordinator Tiffany Maurer
Violation Number 1

Docket No. 2015-0770-WQ-E

PCW

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Rule Cite(s)

Tex. Water Code § 26.121(a)(2)

Violation Description

The Respondent caused, suffered, allowed, or permitted the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge. Specifically, on March 31, 2015, approximately 100,000 gallons of hyperchlorinated water was drained from a 0.5 million gallon tank into a storm sewer discharging to Gilleland Creek, resulting in 1,509 dead fish.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	X		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one
with an x

daily	X
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One daily event is recommended, from the time the discharge began and ceased (March 31, 2015).

Good Faith Efforts to Comply

25.0%

Reduction \$1,875

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes

The Respondent achieved compliance on April 17, 2015, prior to the Notice of Enforcement dated May 1, 2015.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$5,775

This violation Final Assessed Penalty (adjusted for limits) \$5,775

Economic Benefit Worksheet

Respondent City of Pflugerville
 Case ID No. 50512
 Reg. Ent. Reference No. RN101430064
 Media Water Quality
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$2,000	31-Mar-2015	17-Apr-2015	0.05	\$0	\$6	\$7
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to stop the unauthorized discharge and implement appropriate corrective action. The date required is the date of the discharge, and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$7

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN600412985, RN101430064, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN600412985, City of Pflugerville

Classification: SATISFACTORY

Rating: 1.47

Regulated Entity: RN101430064, CITY OF PFLUGERVILLE WATER

Classification: NOT APPLICABLE

Rating: N/A

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 14 - Other

Location: Located at the northeast corner of Pfenning Lane and Black Locust Drive in Pflugerville, Travis County

TCEQ Region: REGION 11 - AUSTIN

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2270014

Compliance History Period: September 01, 2009 to August 31, 2014

Rating Year: 2014

Rating Date: 09/01/2014

Date Compliance History Report Prepared: May 11, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 11, 2010 to May 11, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Tiffany Maurer

Phone: (512) 239-2696

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A – J

A. Final Orders, court judgments, and consent decrees: N/A

B. Criminal convictions: N/A

C. Chronic excessive emissions events: N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1 August 16, 2011 (942198)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 06/24/2014 (1171849) CN600412985
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(iii)

Description: The City failed to keep the on-line pH meters calibrated. During the record review it was observed that the on-line pH meters were out of calibration the last time they were tested and had not been recalibrated.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)

Description: It was observed that the ground storage tanks at the Well 4 and Well 6 sites did not have water level indicators located at the tank sites.

- F. Environmental audits: N/A
- G. Type of environmental management systems (EMSs): N/A
- H. Voluntary on-site compliance assessment dates: N/A
- I. Participation in a voluntary pollution reduction program: N/A
- J. Early compliance: N/A
- Sites Outside of Texas: N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF PFLUGERVILLE
RN101430064**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2015-0770-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Pflugerville (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply located at the northeast corner of Pfenning Lane and Black Locust Drive in Pflugerville, Travis County, Texas (the "Facility").

2. The Respondent has discharged a pollutant into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on March 31, 2015, TCEQ staff documented an unauthorized discharge of hyperchlorinated water into Gilleland Creek. Specifically, on March 31, 2015, approximately 100,000 gallons of hyperchlorinated water was drained from a 0.5 million gallon tank into a storm sewer discharging to Gilleland Creek, resulting in a minimum of 1,509 dead fish.
4. The Respondent received notice of the violations on or about May 6, 2015.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
 - a. By March 31, 2015, ceased the unauthorized discharge of hyperchlorinated water;
 - b. By March 31, 2015, monitored chlorine levels in Gilleland Creek and confirmed that chlorine levels returned to normal levels;
 - c. By April 1, 2015, removed and disposed of the dead fish;
 - d. By April 17, 2015, conducted a visual survey of the creek to confirm the creek was able to sustain aquatic life; and
 - e. By April 17, 2015, submitted a final report describing the response action to the Austin Regional Office.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent caused, suffered, allowed, or permitted the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of TEX. WATER CODE §26.121(a)(2).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Five Thousand Seven Hundred Seventy-Five Dollars (\$5,775) is justified by the facts recited in this Agreed Order, and considered in

light of the factors set forth in Tex. Water Code § 7.053. The Respondent has paid the Five Thousand Seven Hundred Seventy-Five Dollar (\$5,775) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Five Thousand Seven Hundred Seventy-Five Dollars (\$5,775) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Pflugerville, Docket No. 2015-0770-WQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or

otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. The effective date of this Order is the date it is signed by the Commission or the Executive Director. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date


For the Executive Director

11/7/16
Date


I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Pflugerville. I am authorized to agree to the attached Agreed Order on behalf of City of Pflugerville, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, City of Pflugerville waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

10-12-15
Date

Brandon Wade
Name (Printed or typed)
Authorized Representative of
City of Pflugerville

City Manager
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.